

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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EVERETT JONES, 07-A-5636,

Plaintiff,

v.

ORDER  
10-CV-823

SUPERINTENDENT OF ATTICA  
CORRECTIONAL FACILITY,  
SERGEANT COCHRAN and  
R.N. HAWLEY,

Defendants.

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This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr. pursuant to 28 U.S.C. § 636(b)(1). On June 23, 2011, defendants filed a motion to dismiss so much of plaintiff's *pro se* complaint which asserts claims pursuant to 41 U.S.C. § 1983 against Superintendent Conway and Sergeant Corcoran for failure to state a cause of action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. On June 28, 2011, plaintiff filed a motion for summary judgment. On February 3, 2012, Magistrate Judge Schroeder filed a Report and Recommendation, recommending that defendants' motion be granted with respect to Superintendent Conway and denied with respect to Sergeant Corcoran and that plaintiff's motion for summary judgment be denied.

Plaintiff filed objections to the Report and Recommendation on February 21, 2012, and defendants filed a response thereto.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions of the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, defendants' motion is granted with respect to Superintendent Conway and denied with respect to Sergeant Corcoran and plaintiff's motion for summary judgment is denied.

The case is referred back to Magistrate Judge Schroeder for further proceedings.

SO ORDERED.

*s/ Richard J. Arcara*

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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE

DATED: September 25, 2012